

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

BUSTER STANTON FIELD, SR.,
as Personal Representative of the
Estate of Buster Stanton Field, Jr.,
and BUSTER STANTON FIELD, SR.,
as Personal Representative of the
Statutory Heirs of Buster Stanton
Field, Jr.,

PLAINTIFF

VS.

CASE NO. 4:06-CV-4024

JOHN A. CASTRO, acting by and
through the Estate of John A. Castro,
THOMAS A. HALE, BRADLEY
KIRBERGER, AND DIGITAL BIZ, INC.

DEFENDANTS

ORDER

Came to be heard this 13th day of June 2007, Plaintiff's Motion for Approval of Settlement Agreement. Upon consideration of the Motion, the Court finds as follows:

1. Plaintiff is the duly appointed Executor of the Estate of Buster Stanton Field, Jr., Deceased, and the Personal Representative of the statutory beneficiaries of Buster Stanton Field, Jr. On December 4, 2006, the Circuit Court of Miller County, Probate Division, authorized Plaintiff to settle with the underlying tort-feasors, execute any and all necessary releases, negotiate with the other interested parties to obtain a final resolution, and approved the contract entered into by Plaintiff with counsel.

2. Decedent was involved in a motor vehicle accident on October 9, 2005, wherein he was a passenger in a vehicle owned by Decedent and operated by Timothy Rayburn. The collision occurred when an oncoming truck, owned by Bradley Kirberger and operated by John Castro, crossed the centerline of Highway 71 and struck decedent's vehicle head-on. The accident occurred

in Miller County, Arkansas. As a result of the accident, Buster Field, Jr. was killed, and his Estate and wrongful death beneficiaries have an unliquidated claim for damages.

3. Following the Circuit Court's granting Plaintiff authority to settle with the tortfeasors, Plaintiff negotiated with Farmers Insurance Company, the insurance carrier for Bradley Kirberger, as well as Digital Biz, Inc. and its insurance carrier, acting by and through its attorneys of record, Mr. Scott M. Strauss with Barber, McCaskill, Jones & Hale, P.A., and arrived at a settlement which Plaintiff finds to be fair and reasonable. In addition, Plaintiff secured an agreement from the statutory beneficiaries of the wrongful death claim and heirs to the Estate of Buster Stanton Field, Jr., as to a division of the settlement proceeds.

4. Timothy Rayburn and Ms. Samantha Hensley (individually and on behalf of a minor child) are the two other interested parties in the underlying litigation arising from this wreck. Mr. Rayburn suffered a serious fracture to his left arm, which resulted in permanent impairment to this arm. Mr. Rayburn's medical expenses are approximately \$30,000.00. Ms. Hensley was approximately five months pregnant at the time of this collision. Ms. Hensley's baby was born prematurely, weighed approximately two and one-half pounds and was in intensive care for approximately six weeks. Ms. Hensley suffered fractures to her skull (depressed fracture), multiple orbital fractures, nasal fractures, frontal sinus fracture, right wrist fracture, left hip dislocation, left femoral head fracture, fractured pelvis, contusion to her left lung, and a scalp laceration. She has suffered permanent hearing loss in her right ear, and permanent loss of smell. Ms. Hensley has a titanium plate inserted into her skull, as well as numerous screws in her facial bones. According to her physicians, she is likely to face hip replacement surgery in the future. In addition, she has permanent scarring to her head, face and leg. Ms. Hensley's medical expenses to date are

approximately \$160,000.00. In addition to the parties in the filed litigation, Thomas Hale, an occupant in the vehicle owned by Defendant Kirberger and a co-defendant in the litigation, has asserted a claim against the \$300,000.00 insurance policy issued by Farmers Insurance and held by Bradley Kirberger, and is, therefore, an interested party to the settlement. Based upon representations made and medical records provided by Thomas Hale's counsel, Mr. Hale's medical bills exceed \$100,000.00.

5. Pursuant to the Circuit Court's granting Plaintiff authority to negotiate with the Defendants in the underlying litigation, Plaintiff – along with the other interested parties – and the Defendants arrived at a settlement which is fair and reasonable based upon the following payments in the total amount of \$300,000.00 from Bradley Kirberger's insurance policy and \$900,000.00 from Digital Biz, Inc.'s insurance policy for a total of \$1,200,000.00.

6. Of the \$1,200,000.00, the parties to the underlying suit and interested parties have agreed to a division as follows:

- (a) Plaintiff, on behalf of the Estate of Buster Stanton Field, Jr., and on behalf of all statutory beneficiaries for the wrongful death claim: \$481,250.00;
- (b) Samantha Hensley: \$481,250.00;
- (c) Timothy Rayburn: \$137,500;
- (d) Thomas Hale: \$100,000.

Plaintiff's proposed settlement amount is derived from:

- (a) \$87,500.00 from Bradley Kirberger's insurance policy; and
- (b) \$393,750.00 from Digital Biz, Inc.'s insurance policy.

7. It is in the best interest of the statutory beneficiaries and the estate that Plaintiff be

authorized to enter into the compromise settlement of the injury and damage claim, and provide a Release fully releasing Digital Biz, Inc., its agents, employees, servants, and assigns, Kimberly Castro, the personal representative of the Estate of John Castro, individually and in the capacity of Mr. Hale being an employee, agent or servant of Digital Biz, Inc., Thomas A. Hale, individually and in his capacity as an employee, agent, or servant of Digital Biz, Inc., Bradley Kirberger, individually and in his capacity as an employee, agent or servant of Digital Biz, Inc., including all heirs, successors, assigns, including any and all insurers, attorneys of any and all further liability in connection with the claim.

8. In addition, Plaintiff has secured an agreement between the statutory beneficiaries of the wrongful death claim and heirs to the Estate of Buster Stanton Field, Jr., as to a division of the settlement proceeds. The proposed division is as follows:

Total Settlement Proceeds:		\$481,250.00
Attorneys' fees (PRM&C, L.L.P.):	-	\$160,416.67
Costs (PRM&C, L.L.P.):	-	<u>\$ 1,785.08</u>
Net Settlement Proceeds:		\$319,048.25

The statutory beneficiaries of the wrongful death claim and the heirs to the Estate of Buster Stanton Field, Jr., have agreed that the certain monies should be allocated to the probate estate for the payment of the debts, expenses, and fees against the estate as follows:

Debts of the Estate of Buster Stanton Field, Jr.:	\$8,176.77
Probate Expenses and Attorneys' fees of the Estate of Buster Stanton Field, Jr.:	\$4,794.05
Estimated Expenses and Attorneys' fees to close the Estate of Buster Stanton Field, Jr.:	<u>\$2,500.05</u>

Total withheld for benefit of probate estate:	\$15,470.87
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The wrongful death beneficiaries and the heirs of the Estate have agreed to the following division of the settlement proceeds:

Net Settlement Proceeds:	\$319,048.25
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Total withheld for benefit of probate estate: -	\$ 15,470.87
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Amount available:	\$303,577.38
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Agreed Division:

Buster Field, Sr. (father)	\$ 50,596.23
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Marilyn Scoggins (spouse)	\$ 50,596.23
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Jennifer Ann Field (daughter)	\$ 50,596.23
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Sheri Lynn Field (daughter)	\$ 50,596.23
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Jeannie Field Miller (sister)	\$ 50,596.23
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Timothy Rayburn (son)	<u>\$ 50,596.23</u>
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\$303,577.38

Each wrongful death beneficiary and each heir to the Estate is in agreement with the above-referenced acceptance of settlement proceeds and release of claims, the above-referenced application of the settlement proceeds to the fees and costs of the underlying suit, the above-referenced application of the settlement proceeds to the probate estate, and to the above-referenced division of the settlement proceeds.

IT IS THEREFORE ORDERED AND DECREED that Plaintiff, Buster Stanton Field, Sr., as Personal Representative of the Estate of Buster Stanton Field, Jr. and as Personal Representative of the Statutory Beneficiaries of Buster Stanton Field, Jr., is authorized to execute a Release, fully releasing Digital Biz, Inc., its agent, employees, servants, and assigns, Kimberly Castro, the Personal Representative of the Estate of John Castro, both individually and in the capacity of Mr. Hale's being an employee, agent or servant of Digital Biz, Inc., Thomas A. Hale, in his capacity as an employee,

agent or servant of Digital Biz, Inc., Bradley Kirberger, individually and in his capacity as an employee, agent or servant of Digital Biz, Inc., including all heirs, successors, and assigns, including any and all insurers and attorneys of any further liability. Further,

IT IS ORDERED AND DECREED that the settlement agreement negotiated between Plaintiff and the tortfeasors in this action is fair and reasonable and is hereby approved. Further,

IT IS ORDERED AND DECREED that Plaintiff is authorized to apportion the settlement proceeds as set forth below:

Total Settlement Proceeds:		\$481,250.00
Attorneys' fees (PRM&C, L.L.P.):	-	\$160,416.67
Costs (PRM&C, L.L.P.):	-	<u>\$ 1,785.08</u>
Net Settlement Proceeds:		\$319,048.25

Further,

IT IS ORDERED AND DECREED that Plaintiff pay into the Estate of Buster Stanton Field, Jr. the following sum of money:

Debts of the Estate of Buster Stanton Field, Jr.:	\$8,176.77
Probate Expenses and Attorneys' fees of the Estate of Buster Stanton Field, Jr.:	\$4,794.05
Estimated Expenses and Attorneys' fees to close the Estate of Buster Stanton Field, Jr.:	<u>\$2,500.05</u>
Total withheld for benefit of probate estate:	\$15,470.87

Further,

IT IS ORDERED AND DECREED that Plaintiff apportion the net proceeds to the statutory beneficiaries as follows:

Amount available:	\$303,577.38
Agreed Division:	
Buster Field, Sr. (father)	\$ 50,596.23

Marilyn Scoggins (spouse)	\$ 50,596.23
Jennifer Ann Field (daughter)	\$ 50,596.23
Sheri Lynn Field (daughter)	\$ 50,596.23
Jeannie Field Miller (sister)	\$ 50,596.23
Timothy Rayburn (son)	<u>\$ 50,596.23</u>

\$303,577.38

Further, IT IS ORDERED AND DECREED that Plaintiff, Buster Stanton Field, Sr. is authorized to perform all necessary acts to resolve the underlying tort litigation and ensure payment of the proceeds of that litigation as provided for in this Order.

IT IS SO ORDERED, this 13th day of June, 2007.

/s/ Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge